

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OKLAHOMA

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 and

6 OSAGE MINERALS COUNCIL,

7 Intervenor-Plaintiff,

vs.

No. 14-CV-704-GFK-JFJ

8 OSAGE WIND, LLC; ENEL KANSAS,
9 LLC; and ENEL GREEN POWER
NORTH AMERICA,

10

11 Defendants.

12

VIDEOTAPED VIDEOCONFERENCE DEPOSITION OF BILL MOSKALUK
TAKEN ON BEHALF OF THE PLAINTIFF
13 ON JUNE 16, 2021 AT 10:00 A.M.

14

APPEARANCES

15

On behalf of the PLAINTIFF:

Stuart Ashworth

16

Cathryn D. McClanahan

Nolan Fields

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(Appearances continued on the following page)

22

ALSO PRESENT: Megan Beauregard, Michelle Hammock, &

23

Christina Watson

24

VIDEOTAPED BY: Megan Smith

25

REPORTED BY: Abby Rhodes, CSR, RPR

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1 Q Did you indicate to the Court anywhere in
2 this section the purpose for the crushing -- the
3 crushing of larger rocks into smaller rocks?

4 A No.

5 Q Okay. Did crushing the larger rocks into
6 smaller rocks fulfill any purpose?

7 A Say that again.

8 Q Sure.

9 Did the crushing of the larger rocks into
10 smaller rocks, did that serve any purpose?

11 A Yes, it was used for backfill material in
12 the foundation itself. And we can't have anything 6
13 inches or greater in the foundation.

14 Q Okay. That was a requirement that you
15 couldn't have anything larger than 6 inches; is that
16 right, as backfill?

17 A Yes.

18 Q And do you know why that is so?

19 A It's a requirement by Barr Engineering who
20 designed the foundation themselves.

21 Q Do you know what purpose it served to have
22 rocks smaller than 6 inches as backfill?

23 A Yes, it's compaction issues. If you put the
24 larger rock in the hole, your smaller aggregates fall
25 through and create a void on top and you won't get

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1 100 percent compacted areas around -- around your
2 foundation so you had to follow --

3 **Q Why would -- I'm sorry, I cut you off there.**

4 **You had to follow what?**

5 **A You had to follow the design engineer's**
6 recommendations.

7 **Q Okay. And why would it have been important**
8 **that you would have voided those voids through**
9 **compaction?**

10 **A I'm not sure if I understand your question.**
11 It has to deal with compaction efforts on their --

12 **Q Okay.**

13 **A And you wouldn't want to use a large rock in**
14 **that because you can compact over it, but underneath**
15 **it, you wouldn't have any compaction at all.**

16 **Q Okay. Let me re-ask the question this way:**
17 **What was the purpose for compaction of backfill?**

18 **A To stabilize your foundation and also the**
19 turbine on top of your foundation.

20 **Q To stabilize the foundation.**

21 **We're talking about the wind tower**
22 **foundation; is that right?**

23 **A That is correct.**

24 **Q And to stabilize it, does that -- is that in**
25 **reference to providing structural support for the wind**

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1 Q Okay.

2 A -- we did.

3 Q Well, let me -- sure. Let me ask it this
4 way:

5 In -- after foundations are built and cured,
6 is it a customary and standard construction practice
7 within the industry that the crushed rock and soil is
8 returned to the hole from which it came from?

9 A Yes.

10 Q Okay. So it would be your testimony that it
11 would not be a customary or standard construction
12 process to use the crushed rock and soil for any
13 purpose other than to return it to the hole from which
14 it came from?

15 MR. RAY: Object to form.

16 THE WITNESS: That's what we normally do,
17 yes, is replace that material that we excavated back
18 into the same hole and use it for compaction
19 requirements. Any of the other soils that remain, we
20 build the site up to ensure proper drainage around the
21 turbines -- away from the turbines, I'm sorry.

22 Q (By Mr. Ashworth) Sure.

23 So my question would be: It would not be a
24 customary or standard construction process to use the
25 excavated material for anything other than backfill

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1 into the exact same hole from which it was -- it came
2 from?

3 MR. RAY: Object to form.

4 THE WITNESS: On this site, we had to use
5 all the material on that particular site. We used it
6 for backfill material and also the pad around the --
7 the access pad around the turbines itself as well
8 and...

9 Q (By Mr. Ashworth) Okay. So I'm just kind of
10 using logic here, you -- you just testified that it is
11 a customary and standard construction process in the
12 industry to return excavated material back to the hole
13 from which it came from, that that is the standard and
14 customary practice within the industry, is when you
15 excavate material and it's been crushed, you return it
16 back to that same hole; is that right?

17 A The majority -- yes.

18 Q Okay. Since that is the customary and
19 standard process, it would be -- logic to me would say
20 it's not -- would not be a customary process or
21 standard construction practice to use the excavated
22 soil for any other purpose?

23 MR. RAY: Object to form.

24 THE WITNESS: You would still use the
25 material on that specific site. Anything remaining,

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1 you could probably use it elsewhere. However, the
2 restrictions on this project didn't allow us to do so.

3 Q (By Mr. Ashworth) Then why did you tell the
4 Court that it is a customary and standard construction
5 process that crushed rock and soil is returned to
6 the -- that same hole from which it came from when
7 you're telling me today that that's not the customary
8 and standard construction process?

9 A It is -- it is the construction process
10 that -- that you do. Anything that is left over and
11 excess on other projects, you know, you can use in the
12 shallow area and build it up or you try to use a
13 majority of it around the location itself. This
14 particular project we had to leave everything within,
15 I can't remember the dimensions of the footprint, but
16 we had to leave everything on that particular site,
17 the backfill material, road, you know, the access road
18 leading up to it, et cetera.

19 Q Okay. Well, that's not what you're telling
20 the Court here in your declaration to the Court under
21 oath. You're telling the Court here that the reason
22 why you crushed -- why the crushed rock and soil was
23 returned in the hole from which it came from is
24 because it's a customary and standard construction
25 process, but now you're telling me that the reason why

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1 going to look at the -- the second sentence, it says
2 "No sand, soil, or rock from any excavation is used
3 for any purpose other than to return to the hole from
4 which it came."

5 What does that sentence mean to you?

6 A Exactly that, that it was to remain there.

7 Q That the sand, soil, and rock that was
8 excavated, so the excavated material, the only purpose
9 for the excavated material was to be used as backfill
10 to the hole from which it came from; is that right?

11 A Yes, that's my interpretation, yes.

12 Q Okay. So you're telling the Court that the
13 excavated material was only going to be used for
14 backfill or for no other purposes?

15 A As long as the material stayed on that
16 designated site, yes.

17 Q Okay. But, in fact, this excavated material
18 was used for some -- for a purpose other than
19 backfill; is that correct?

20 MR. RAY: Object to form.

21 THE WITNESS: In some cases it was spread
22 around the turbine site itself, yes.

23 Q (By Mr. Ashworth) When it was -- so when it
24 was used as backfill, it was also being used for
25 structural support for the wind tower; is that

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1 **correct?**

2 A The backfill material was for the structural
3 support. The other area was for drainage that we
4 built up draining it away from the turbine itself, and
5 a portion of that in that little access road and apron
6 around the terminal -- around the turbine, but it
7 didn't leave that particular site, to my knowledge.

8 Q **Did you tell the Court that the material is
9 being used for structural support in your declaration?**

10 MR. RAY: Object to form.

11 THE WITNESS: I don't think so, no.

12 Q **(By Mr. Ashworth) Do you think it would have
13 been important for the Court to know that Enel Green
14 and Osage Wind was using the backfill material for
15 structural support?**

16 MR. RAY: Object to form.

17 THE WITNESS: I -- I don't know the answer
18 to that.

19 Q **(By Mr. Ashworth) Okay. Let me re-ask it
20 this way: Do you know if it would have been important
21 for the Court to know that the materials that were
22 excavated on site was being used for structural
23 support for the wind tower?**

24 MR. RAY: Object to form.

25 THE WITNESS: I -- I don't -- I don't know

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